

# **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1961**

**N [REDACTED] 68**

**JAMES FRANCIS HILL, PETITIONER**

**vs.**

**UNITED STATES**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JUNE 30, 1960  
CERTIORARI GRANTED MARCH 20, 1961**

# Supreme Court of the United States

OCTOBER TERM, 1960

No. 833

JAMES FRANCIS HILL, PETITIONER

*vs.*

UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. 1]

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE,  
SOUTHERN DIVISION**

Docket 10,113

THE UNITED STATES

-v-

**JAMES FRANCIS HILL, alias James Hill, alias Jos. Carter,  
alias Albert Meisler, alias George Collins, alias Joe**

See. 2312, Ti. 18, USC, NMVTA 1 count

Attorney for U. S.: Otto T. Ault

For Defendant: W. N. Dietzen, Appointed

April 1954

Jack Bryan and E. B. Baker appointed

**DOCKET ENTRIES**

Nov. 10, 1952 Indictment filed.

Nov. 17, 1952 James Francis Hill committed to custody of Attorney General until mentally competent to stand trial, or until pending charges against him are otherwise disposed of. Darr, D. J. Min. Bk. "Z" p. 32

Dec. 11, 1952 Order for James Francis Hill returned executed and filed. Deft. delivered to Springfield, Mo. on 11-24-52 by Petre, Deputy U. S. Marshal.

Jan. 28, 1953 Hill's motion for correction of sentence and or appeal to Circuit Court of Appeals filed. Service by Hill to U. S. Attorney.

Feb. 3, 1953 Opinion, Darr, D. J. on next above motion filed. Service by Clerk to all parties.

Feb. 4, 1953 Opinion Darr, D. J. on next above motion and copies of the indictment and order of commitment mailed to Hill by Clerk.

Feb. 5, 1953 File of James Francis Hill mailed to Court of Appeals, Cincinnati, Ohio. Notice given to U. S. Attorney.

Feb. 18, 1953 Transcript of official court reporter filed.

May 23, 1953 Order, Darr, D. J. that Court Reporter's transcript be sent to Clerk of the Court of Appeals, Cincinnati.

May 26, 1953 Court Reporter's transcript mailed to Clerk of the Court of Appeals.

Oct. 21, 1953 Motion of Defendant Hill for further disposition of the case, filed.

Oct. 23, 1953 Mandate of U. S. Court of Appeals and copy of opinion filed.

May 6, 1954 Plea of defendant (plea of insanity at time of offense) filed.

May 6, 1954 Plea of not guilty by Deft. Hill on grounds of insanity at time of crime; represented by attorneys; bond fixed at \$15,000.00 and remanded to the custody of the Marshal. Min. Bk. "Z" p. 828

[fol. 2]

June 2, 1954 Motion of U. S. Attorney for judicial determination of mental competency of defendant, filed. Order, Darr, D. J. overruling said motion filed. Min. Bk. "Z" p. 875

June 2, 1954 Trial to jury begun. Jury respite until 9:30 A.M. June 3, 1954. Min. Bk. "Z" p. 878

June 3, 1954 Trial to jury resumed. Plaintiff's proof heard; motion of defendant for judgment of acquittal as to kidnapping charge; motion overruled; motion of defendant for judgment of acquittal as to being competent; motion overruled; part of defendant's proof heard; jury respite to 9:30 A.M., June 4, 1954. Min. Bk. "Z" p. 878

June 4, 1954 Trial to jury resumed; proof completed; argument of counsel; charge of Court; verdict of guilty; Min. Bk. "Z" p. 882

June 4, 1954 *Judgment*: Three years on the one count; sentence to begin at the expiration of sentence imposed in No. 10,114, Darr, D. J., filed. Min. Bk "Z" p. 882

June 9, 1954 Defendant's motion for new trial filed. Service made by counsel.

June 11, 1954 Petition of U. S. Attorney for Writ of Habeas Corpus Ad Prosequendum for Deft. Hill, filed.

June 11, 1954 Order, Darr, D. J. granting above petition filed. Min. Bk. "Z" p. 894

June 11, 1954 Writ of Habeas Corpus Ad Prosequendum issued and delivered to the U. S. Marshal for service.

June 15, 1954 Motion for new trial heard; argued by defendant's counsel and overruled by Darr, D. J.

June 18, 1954 Copy of Commitment, Deft. Hill, returned executed and filed. Defendant delivered 6-7-1954 to Fed. Pen., Atlanta, Georgia. Lindsay, USM.

June 25, 1954 Writ of Habeas Corpus Ad Prosequendum returned executed and filed. Quarles, USM

Oct. 18, 1954 Motion of James Francis Hill, to vacate sentence, filed.

Oct. 27, 1954 Opinion, Darr, D. J., denying petition, filed. Service of copies by Clerk by mail.

Nov. 18, 1954 Notice of Appeal of James Francis Hill, filed.

Nov. 17, 1954 Court Reporter's transcript filed.

Nov. 18, 1954 Order, Darr, D. J., that notice of appeal be filed (submitted by plaintiff on Nov. 8, 1954) and defendant be furnished a part of the technical record, filed. Min. Bk. A-1, p. 36

Dec. 22, 1954 Supplemental opinion, Darr, D. J., on defendant's petition to vacate sentence, filed. Petition denied. Copies mailed by Clerk.  
[fol. 3]

Dec. 22, 1954 Order, Darr, D. J., on next above opinion, directing technical record to be sent to the Court of Appeals; record of inquisition hearing be furnished by official court reporter on pauper oath, etc; time for filing record on appeal extended additional 30 days, filed. Min. Bk. "A-1" p. 100

Jan. 10, 1955 Court Reporter's transcript filed. Copy mailed to Defendant.

Jan. 18, 1955 Record on Appeal mailed to U. S. Court of Appeals, defendant notified.

Aug. 4, 1955 Opinion, Martin, Miller and Stewart, C.J.s. and mandate filed. Entire file received from Court of Appeals

Aug. 8, 1955 Order on Mandate affirming judgment of District Court, Darr, D.J. filed. Min. Bk. "A-1" p. 416

Mar. 15, 1956 Deft. James Francis Hill's motion to vacate sentence and advance notice of appeal filed. Service to U. S. Attorney by Hill.

Mar. 21, 1956 Memorandum, Darr, D.J. denying motion to vacate sentence and permitting the filing of the motion upon the pauper's oath, filed. Copies served by Clerk.

Mar. 21, 1956 Order, Darr, D.J., denying defendant's motion to vacate sentence under Section 2255, Ti. 28, USCA; the Court permitting the filing of motion upon the pauper's oath taken, filed. Min. Bk. "A-1" p. 692. Service made by Clerk.

Mar. 29, 1956 Record on Appeal mailed to Court of Appeals, Cincinnati, Ohio.

April 2, 1956 Notice of Appeal in forma pauperis.

April 8, 1957 Mandate from Court of Appeals, affirming judgment of District Court, filed.

Dec. 19, 1957 Deft. James Francis Hill motion to vacate sentence filed. Service by deft. to U. S. Attorney.

Jan. 10, 1958 Memo Opinion, Darr, D. J. denying motion to vacate sentence, filed. Service of copy made by clerk.

Jan. 16, 1958 Notice of Appeal, by James Francis Hill, in forma pauperis, filed.

Jan. 16, 1958 Record mailed to Court of Appeals.

Jan. 21, 1958 Entire Old Record mailed to Court of Appeals.

Feb. 14, 1958 Letter received from Deft. Hill and filed. (Letter requested trial transcript.)

Feb. 14, 1958 Order, Darr, D. J., giving three reasons why request for transcript of trial cannot be granted, filed. Certified copy to Hill and original mailed to Court of Appeals.

[fol. 4]

July 21, 1958 Opinion, Simons, Miller & Stewart, Circuit Judges, setting aside order of District Court and remanding case for further proceedings, filed.

July 21, 1958 Mandate remanding case to District Court, filed.

July 21, 1958 Motion of James Francis Hill to vacate sentence filed. Affidavit in support thereof filed.

Aug. 6, 1958 Petition for writ of Habeas Corpus Ad Prosequendum filed.

Aug. 6, 1958 Order, Taylor, D. J. that writ be issued, filed. Min. Bk. A-3 p. 648

Aug. 6, 1958 Writ of Habeas Corpus Ad prosequendum issued and mailed to U. S. Marshal for service.

Aug. 27, 1958 Response of U.S.A. to petitioner's motion to vacate sentences. Service made by counsel.

Sept. 2, 1958 Order, Taylor, D. J. on mandate filed. Min. Bk. "B" p. 2

Sept. 10, 1958 This cause came on to be heard on defendant's motion to vacate sentence, before Taylor, D. J. Defendant appeared in person and by Attorney, Joseph B. Roberts, appointed by the Court. All of defendant's evidence was heard; part of the plaintiff's proof was heard; Court adjourned until 9:00 A.M. Sept. 11, 1958. Min. Bk. "B" p. 8.

Sept. 11, 1958 Hearing on defendant's motion to vacate sentence resumed, Taylor, D. J. U. S. proof completed; rebuttal by defendant; argument of counsel; motion denied. Min. Bk. "B" p. 9.

Sept. 11, 1958 Order, Taylor, D. J. that motion to vacate be and hereby is denied; that petitioner be returned to custodial agent of the government; or custody of Attorney General, filed. Min. Bk. "B" p. 10-a-b-c-d-e-f-g

Sept. 11, 1958 Order, Taylor, D. J., granting leave to appeal in forma pauperis, etc. filed. Min. Bk. "B" p. 11.

Sept. 11, 1958 Notice of Appeal filed.

Sept. 11, 1958 Order, Taylor, D. J., instructing Marshal to deliver James Francis Hill to Warden, U. S. Penitentiary, Atlanta, Georgia, instead of U. S. Medical Center, Springfield, Mo. Min. Bk. "B" p. 12.

Sept. 12, 1958 Copy of notice of appeal and docket entries mailed to Court of Appeals.

Oct. 9, 1958 Entire record mailed to Court of Appeals, Cincinnati, Ohio.

Oct. 17, 1958 Order, Taylor, D. J. extending time to file transcript of testimony, to Dec. 12, 1958, filed. Min. Bk. "B" p. 63

Oct. 21, 1958 Writ of Habeas Corpus Ad Prosequendum returned executed and filed. Farmer, D. Marshal.

Dec. 15, 1958 Order, Miller, J., for Sixth Circuit, U.S. Court of Appeals, extending time to Jan. 11, 1959 to file transcript of testimony, filed.

[fol. 5]

Oct. 21, 1959 Motion of Defendant Hill to vacate sentence, filed.

Oct. 28, 1959 Opinion, McAllister & Miller, C. Js., and Cecil, D.J., filed.

Oct. 28, 1959 Mandate affirming judgment of District Court filed.

Nov. 16, 1959 Amendment to motion to vacate sentence filed.

Nov. 20, 1959 Letter of James Francis Hill, dated Nov. 15, 1959, filed as part of motion to vacate sentence and plea.

Nov. 27, 1959 Letter from Deft. dated Nov. 21, 1959, regarding response to motion to vacated sentence, filed. Letter acknowledged by J. R. Dale, Deputy Clerk.

Dec. 10, 1959 Letter from Deft. dated Dec. 7, 1959, to James W. Parrott, filed.

Dec. 29, 1959 Letter from Deft. dated Dec. 26, 1959, regarding notes of deceased court reporter, etc. filed.

Jan. 7, 1960 Letter from Deft. dated Jan. 4, 1959, seeking to have Government ruled in default for not responding to defendant's motions, filed.

Jan. 7, 1960 Response of U.S.A. to petitioner's motion to vacate sentences, filed. Certified copy mailed to deft. by Clerk.

**Jan. 14, 1960** Traverse of Deft. Hill to response of U.S.A. filed. Service of copy made by defendant.

**Jan. 14, 1960** Memorandum Opinion, Taylor, D. J. denying petitioner's motion filed Oct. 21, 1959 and amending motion filed Nov. 16, 1959 to vacate the sentences filed. Copy mailed defendant by Clerk.

**Jan. 14, 1960** Order, Taylor, D. J. denying petitioner's motion filed, Oct. 21, 1959 and amended motion filed Nov. 16, 1959. Min. Bk. "B" p. 675

**Jan. 22, 1960** Letter from Deft. Hill stating he had not received copy of Opinion, Taylor, D. J. ruling on his motion to vacate sentences, and advising he wished to file notice of appeal in forma pauperis if ruling was against him, etc. filed.

**Jan. 25, 1960** Notice of Appeal filed.

**Jan. 25, 1960** Order, Taylor, D. J., that motion to appeal in forma pauperis be and hereby is granted, filed. C. O. Bk. 10, p. 681

**Jan. 27, 1960** Copy of Notice of Appeal and Docket Entries mailed to Court of Appeals, Cincinnati, Ohio.

**[fol. 6]**

**Feb. 8, 1960** Delayed Notice of Appeal, Affidavit of Poverty, and petition for trial copy of transcript filed.

**Feb. 9, 1960** Order, Taylor, D. J. covering Mandate of Court of Appeals, filed Oct. 28, 1959, affirming judgment of lower court, filed. Min. Bk. "B" p. 696

**Feb. 11, 1960** Order, Taylor, D. J. denying defendant's prayer to file, docket and prosecute appeal, filed. Min. Bk. "B" p. 697 Certified copy mailed to defendant by Clerk.

[fol. 7]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

No. 10,114

THE UNITED STATES

-v-

JAMES FRANCIS HILL, alias James Hill, alias Jos. Carter,  
alias Albert Meisler, alias George Collins, alias Joe  
Section 1201 Ti. 18, USC 1 count—kidnapping

Attorney for plaintiff: Otto T. Ault

For Defendant: Wood, Dietzen & Parks, appointed.

April, 1954

E. B. Baker & Jack Bryan appointed for Hill

DOCKET ENTRIES

Nov. 10, 1952 Indictment filed.

Nov. 12, 1952 Court appointed Wood, Dietzen & Parks  
as counsel for James Francis Hill.

Nov. 13, 1952 Motion of Deft. Hill for mental examination,  
filed. Service of copy made by counsel.

Nov. 13, 1952 Order, Darr, D. J. that Deft. Hill be examined  
by one qualified psychiatrist, and Dr. J. B. Swafford is appointed to make  
such examination, filed. Min. Bk. "Z" p. 29.

Nov. 17, 1952 Def. Hill found to be mentally incapable of  
standing trial; committed to custody of  
Atty Gen'l until such time as able to stand  
trial, Darr, D. J. Min. Bk. "Z" p. 32.

Jan. 28, 1953 Hill's motion for correction of sentence  
and/or appeal to Circuit Court of Appeals  
filed. Service by Hill to U. S. Attorney

Feb. 3, 1953 Opinion on next above motion filed. Service by Clerk.

Feb. 5, 1953 File of James Francis Hill mailed to Court of Appeals, Cincinnati. Notice given to U. S. Atty.

Feb. 18, 1953 Transcript of Official Court Reporter filed.

May 23, 1953 Order, Darr, D. J. that Court Reporter's transcript be sent to Clerk, Court of Appeals, filed.

May 26, 1953 Court Reporter's transcript and original order, Darr, D. J. mailed to Court of Appeals.

Oct. 21, 1953 Motion of Deft. Hill for further disposition of the case, filed.

Oct. 23, 1953 See Cr. No. 10,113 for mandate and copy of Opinion of U. S. Court of Appeals.

May 6, 1954 Written plea of not guilty; insanity at time offense was committed, filed. Service of copy by counsel.

May 6, 1954 Deft. Hill, plea of not guilty on grounds of insanity at time crime was committed; bond fixed at \$15,000; remanded to custody of Marshal; Represented by Attorney; Min. Bk. "Z" p. 828

[fol. 8]

June 2, 1954 Order, Darr, D. J., overruling motion regarding mental competency, filed. Ent'd Min. Bk. "Z" p. 875

June 2, 1954 Trial to jury begun; jury respite to 9:30 A.M. Min. Bk. "Z" p. 878

June 3, 1954 Trial to jury resumed; plaintiff's proof heard; motion of deft. for judgment of acquittal as to kidnapping charge; motion overruled; motion of defendant for judgment of acquittal as to competency; motion overruled; part of defendant's proof heard; jury respite to 9:30 A.M. June 4, 1954. Min. Bk. "Z" p. 878

June 4, 1954 Trial to jury resumed; proof completed; argument of counsel; charge of Court; verdict of guilty; Min. Bk. "Z" p. 882

June 4, 1954 *Judgment*: 20 years on the one count of the indictment, Darr, D. J. filed. Min. Bk. "Z" p. 883

June 9, 1954 Defendant's motion for new trial filed. Service made by counsel.

June 15, 1954 Motion for new trial heard; argued by defendant's counsel and overruled by Darr, D. J.

June 18, 1954 Copy of commitment returned executed and filed. Defendant delivered 6-7-1954 to Fed. Pen., Atlanta, Georgia. Lindsay, D.M.

Oct. 18, 1954 Motion of James Francis Hill to vacate sentence filed.

Nov. 17, 1954 Court Reporter's transcript filed.

Nov. 18, 1954 Notice of Appeal of James Francis Hill filed.

Nov. 18, 1954 Order, Darr, D. J. that notice of appeal submitted by plaintiff on Nov. 8, 1954 be filed and defendant be furnished a part of technical records, filed. Min. Bk. "A-1" p. 36

Dec. 22, 1954 Supplemental Opinion, Darr, D. J. filed. (Motion or petition to vacate sentence overruled; service made by Clerk.

Dec. 22, 1954 Order, Darr, D. J. directing that all of technical record be sent up to Court of Appeals; transcription of inquisition hearing be made and filed and on pauper oath, etc; extending time for filing record on appeal for 30 additional days, filed. Min. Bk. "A-1" p. 100.

Jan. 10, 1955 Court Reporter's transcript filed.

Jan. 18, 1955 Record mailed to U. S. Court of Appeals.

Aug. 4, 1955 Opinion and Mandate, together with entire file, received from Court of Appeals and filed.

Aug. 8, 1955 Order on Mandate, affirming judgment of District Court, Darr, D. J. filed. Min. Bk. "A-1" p. 416

Mar. 15, 1956 Deft. James Francis Hill's motion to vacate sentence and advance notice of appeal filed. Service to U. S. Attorney by Hill.

[fol. 9]

Mar. 21, 1956 Memorandum, Darr, D. J., denying motion to vacate sentence and permitting the filing of the motion upon the pauper oath taken, filed. Copies served by Clerk.

Mar. 21, 1956 Order denying defendant's motion to vacate sentence under section 2255, Title 28, USCA, the Court permitting the filing of motion upon the pauper's oath taken. Min. Bk. "A-1" p. 692

Mar. 29, 1956 Record on Appeal mailed to Court of Appeals.

Apr. 2, 1956 Notice of Appeal in forma pauperis filed

Apr. 8, 1957 Mandate from Court of Appeals, confirming order of District Court, filed.

Dec. 19, 1957 Deft. James Francis Hill's motion to vacate sentence filed. Service by Deft. to U. S. Attorney.

Jan. 10, 1958 Memorandum, Darr, D. J., denying motion to vacate sentence, filed. Service of copy to Hill and U. S. Attorney by Clerk.

Jan. 16, 1958 Notice of Appeal by James Francis Hill in forma pauperis filed.

Jan. 16, 1958 Record mailed to Court of Appeals.

Jan. 21, 1958 Entire Old Record mailed to Court of Appeals.

Feb. 14, 1958 Letter received from Hill. (Letter requested trial transcript.)

Feb. 14, 1958 Order, Darr, D. J. giving three reasons why request for transcript of trial cannot be granted, filed. Certified copy to Hill and original to Court of Appeals.

July 21, 1958 Opinion, Simons, Miller & Stewart, Circuit Judges, setting aside the order of the District Court, and remanding case to District Court, filed.

July 21, 1958 Mandate remanding case to District Court filed.

July 21, 1958 Motion of James Francis Hill to vacate sentence and affidavit in support thereof, filed.

Aug. 6, 1958 Petition for Writ of Habeas Corpus Ad prosequendum filed.

Aug. 6, 1958 Order, Taylor, D. J. that writ be issued, filed. Min. Bk. "A-3" p. 648

Aug. 6, 1958 Writ of Habeas Corpus Ad Prosequendum issued and mailed to U. S. Marshal for service.

Aug. 27, 1958 Response of U. S. A. to petitioner's motion to vacate sentences filed herein on Dec. 1957, filed. Service of copies by counsel.

Sept. 2, 1958 Order, Taylor, D. J. on mandate filed.

Sept. 10, 1958 Cause came on to be heard on defendant's motion to vacate sentence, before Taylor, D. J. Defendant appeared in person and by Attorney Jos. B. Roberts appointed by the Court. All of defendant's evidence was heard; part of plaintiff's proof heard; Court adjourned until 9 A.M., Sept. 11, 1958. Min. Bk. "B" p. 8

[fol. 10]

Sept. 11, 1958 Hearing on defendant's motion to vacate sentence resumed, Taylor, D. J. U. S. proof completed; rebuttal by defendant; argument of counsel; motion denied; Min. Bk. "B" p. 9.

Sept. 11, 1958 Order, Taylor, D. J. that motion to vacate be and hereby is denied; that petitioner be returned to custodial agent of the government, or custody of the Attorney General, filed. Min. Bk. "B" p. 10-a-b-c-d-e-f-g

Sept. 11, 1958 Order, Taylor, D. J., granting leave to appeal in forma pauperis, filed. Min. Bk. "B" p. 11

Sept. 11, 1958 Notice of Appeal filed. Service of copy by counsel.

Sept. 11, 1958 Order, Taylor, D. J., instructing Marshal to deliver James Francis Hill to Warden, U. S. Penitentiary, Atlanta, Georgia, instead of U. S. Medical Center, Springfield, Mo. filed. Min. Bk. "B" p. 12.

Sept. 12, 1958 Copy of notice of appeal and docket entries mailed to Court of Appeals.

Oct. 9, 1958 Entire record mailed to Court of Appeals, Cincinnati, O.

Oct. 17, 1958 Order, Taylor, D. J. extending time for filing transcript of testimony to Dec. 12, 1958, filed. Min. Bk. "B" P. 63

Oct. 21, 1958 Writ of Habeas Corpus Ad Prosequendum returned executed and filed. Farmer, D.M.

Dec. 15, 1958 Order, Miller, D. J., for 6th Circuit, U. S. Court of Appeals, to extend to Jan. 11, 1959, time for filing transcript of testimony, filed.

Oct. 21, 1959 Motion of Deft. Hill to vacate sentence filed.

Oct. 28, 1959      Opinion, McAllister & Miller, C. Js, and Cecil, D. J. filed.

Oct. 28, 1959      Mandate affirming judgment of District Court filed.

Nov. 16, 1959      Amendment to motion to vacate sentence filed.

Nov. 20, 1959      Letter of James Francis Hill, dated Nov. 15, 1959, filed as a part of the motion to vacate sentence and plea.

Nov. 27, 1959      Letter from Deft. dated Nov. 21, 1959, regarding response to motion to vacate sentence, filed. Letter acknowledged by Dale, D. C.

Dec. 29, 1959      Letter from Deft. dated Dec. 26, 1959, regarding notes of deceased Court Reporter, etc. filed.

Jan. 7, 1960      Response of U.S.A. to petitioner's motion to vacate sentences, filed. Certified copy mailed defendant by Clerk.

Jan. 14, 1960      Traverse of Deft. Hill, to response of U.S.A. filed. Service of copy made by defendant.

Jan. 14, 1960      Memorandum Opinion, Taylor, D. J. denying petitioner's motion filed Oct. 21, 1959, and amended motion filed Nov. 16, 1959, to vacate the sentences filed. Copy mailed defendant by Clerk.

[fol. 11]

Jan. 14, 1960      Order, Taylor, D. J. denying petitioner's motion, filed Oct. 21, 1959, and amended motion filed Nov. 16, 1959, to vacate the sentences filed. Copy mailed defendant by Clerk. Min. Bk. "B" p. 675

**Jan. 22, 1960** Letter from Defendant Hill, stating he had not received a copy of Opinion, Taylor, D. J., ruling on his motion to vacate sentences, and advising he wished to file notice of appeal in forma pauperis, if ruling was against him, etc. filed.

**Jan. 25, 1960** Notice of Appeal filed.

**Jan. 25, 1960** Order, Taylor, D. J., that motion to appeal in forma pauperis be and hereby is granted, filed. C. O. Bk. 10, p. 681

**Jan. 27, 1960** Copy of Notice of Appeal and Docket Entries mailed to U. S. Court of Appeals, Cincinnati, Ohio.

[fol. 12]

**Feb. 8, 1960** Delayed Notice of Appeal, Affidavit of Poverty and petition for trial copy of transcript filed. Affidavit of service filed.

**Feb. 9, 1960** Order, Taylor, D. J. covering Mandate of Court of Appeals, filed Oct. 28, 1959, affirming the judgment of the lower court, filed. Min. Bk. "B" p. 696

**Feb. 11, 1960** Order, Taylor, D. J., denying defendant's prayer to file, docket and prosecute appeal, filed. Min. Bk. "B" p. 697 Certified copy mailed to defendant by Clerk.

[fol. 13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

No. 10,113 Criminal

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JAMES FRANCIS HILL, DEFENDANT

TRANSCRIPT OF PROCEEDINGS OF JUNE 2-4, 1954

[fol. 14]

June 2, 1954.

BEFORE:

The Honorable Leslie R. Darr, Judge.

(Came the parties as before for trial on defendant's plea of not guilty because of insanity.)

(On motion by the United States Attorney, the Court, in the absence of the jurors, inquired into the present mental condition of the defendant. Following the introduction of proof on behalf of the government and the defendant, the Court held the defendant was mentally capable of standing trial and advising with counsel.)

MOTION TO STRIKE SECOND PORTION OF DEFENDANT'S PLEA  
AND GRANTING THEREOF

GEN'L MEEK: May it please the Court, before the jurors come back in I would like to move that the second portion of the defendant's plea be stricken.

THE COURT: I believe the gentlemen will agree with that. This plea mentions insanity. You did not mention any time on that. Who wrote it of counsel?

MR. BAKER: I drew it up.

GEN'L MEEK: Of course the defendant pleads not guilty by reason of insanity. Of course that is at the time shown in the affidavit. The second party states:

"In support of said plea defendant will show that he has been adjudged insane and spent many years at mental [fol. 15] institutions, and will show also that he was adjudged insane shortly after the occurrence of the alleged offence with which he is charged. Defendant has not been declared sane, but on the contrary the United States Circuit Court of Appeals has also ruled defendant insane." So that indicates a plea of present insanity.

THE COURT: That would indicate it. The idea, as I understand the law, either sanity or insanity could be subject to adjudication. I assume you do not have any objection to strike the last part, do you? If you do I am striking it anyhow, because it relates to a plea of present insanity. As the defendant is adjudged insane at one time he remains insane until he is proven sane, so far as the law is concerned. To strike the second part of the plea, I think, is proper. The other part stays in, you gentlemen for the defendant.

(The jurors were recalled to the court room.

(The jury was impaneled, examined and accepted, having heretofore been sworn to try all cases.)

Following the introduction of all the evidence offered on the trial of the case, oral arguments by counsel for the respective parties and charge of the Court, the jury retired for consideration of their verdicts, later reporting into open court that they found the defendant guilty as charged in each case.)

[fol. 16] \*(The case was called for judgment)

THE COURT: Does the government care to say anything?

GEN'L DAVIS: The Government does not care to make any statement, your Honor. I think it has been developed in the proof, the character of this defendant and the other crimes which he has committed.

THE COURT: I believe the other co-defendant, the adult got seventeen years?

GEN'L DAVIS: He received fifteen years on the kidnapping and two years on the Dyer Act. The minor boy received five years in the kidnapping charge and one year and one day on the Dyer Act charge.

THE COURT: That is the way I remembered it.

Now, gentlemen, Mr. Hill has been a puzzle to the Court for a long time. Intermittently the Court has gone into it considerably. I have studied about his case, his condition, and I feel like I am familiar with it. The court adjudicated on appeal that Mr. Hill was incompetent, that he was unable to properly advise counsel and defend himself in the trial. Since that time there has been considerable psychopathic examinations and I think if another case of similar character comes up I will use the privilege which permits the Court to refer a man for observation rather than to take one examination, and make a general [fol. 17] practice of getting one or more psychiatric examinations. Taking the psychiatric examinations all the way through, together with the lay testimony, and from what I have seen through several years, I am of opinion that Mr. Hill is emotionally upset, that he is what is termed, seems to be a psychopathic personality. In other words, he is mentally and emotionally disturbed, and I think one doctor described it as I really believe he is, that he does these things and he knows what he is doing, and yet does them.

The question of the human mind and its envolvements is very difficult and Mr. Hill for his own protection and for the protection of society, it looks like he has to be kept up. He is so anti-social, and with his moralities, he gets out there and does these things. But I believe he knows what he is doing and knows the result of it from all the proof.

And, I think the jury's verdict was proper in every respect from the standpoint of the law and the facts.

Then the question of punishment. The kidnapping of course is serious. While it is true the kidnapping is not the most flagrant it could be by any means, but it is bad enough. It is always a bad thing to force somebody against their will at gun point to do something he does [fol. 18] not want to do.

So, he is going to do what he wants to do. He is anti-social and he is going to do what he wants to do. He has indicated that on many occasions when he knows it is not right to do what he does. And I think the punishment should be substantial. I think I also should consider that

Mr. Hill has been incarcerated nineteen months by reason of these transactions back and forth, in jail and in institutions at Springfield and in Massachusetts, but instead of nineteen months I am going to make it two years from what I have in mind making the sentence. Instead I am taking off two years from what I had in mind. I had in mind it should be twenty-five years.

#### **SENTENCE**

**In the kidnapping case, twenty years sentence.**

**In the Dyer Act case, three years.**

**The kidnapping case to run first and the Dyer Act case to run consecutive with the kidnapping case.**

**That terminates it so far as the present is concerned.  
Remand Mr. Hill to the marshal.**

I do hereby certify that the foregoing is a true, correct, and complete transcript of my shorthand notes taken of all proceedings had on arraignment, plea and judgment in the above entitled cause.

/s/ **Charles M. Fain**  
**CHARLES M. FAIN,**  
**Official Court Reporter.**

[fol. 19] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

Criminal Actions Nos. 10113 and 10114

UNITED STATES OF AMERICA

vs.

JAMES FRANCIS HILL

EXCERPTS FROM MEMORANDUM OPINION—Sept. 11, 1958

THE COURT: These cases, Criminal Nos. 10113 and 10114, are before the court on the petition of James Francis Hill to vacate sentences imposed pursuant to the verdict of the jury. The petition and motion are filed under title 28, section 2255 U. S. C. The motion was denied by this court on January 10, 1958, and following the order of denial an appeal was perfected to the Court of Appeals in Cincinnati.

The Court of Appeals, in a per curiam opinion filed June 26, 1958, reversed the action of this court because this court failed to grant a hearing on ground No. 5 of the petition, which charges, in substance, that the petitioner was denied his constitutional right, under the due process clause of the fifth amendment, in that he was deprived by "custodial agents of the United States Attorney General in their refusal to allow petitioner to [fol. 20] prepare and file notice of appeal within the time set forth by law, Rule 37(a)2, Federal Rules of Criminal Procedure, title 18, U. S. C." Petitioner had filed at least two petitions to vacate the sentences prior to the time the one under consideration was filed, each of which was denied by this court, from which appeals were taken, and the action of this court was affirmed by the Court of Appeals. *Hill v. United States*, 223 Fed 2nd 699, 6th Circuit, certiorari denied 350 U. S. 867. *Hill v. United States*, 238 Fed. 2nd 84, 6th Circuit (1956).

The court heard proof on the factual question as to whether Hill was denied the right of appeal by the custodial agents of the government yesterday and today. (Clerk's Note: A recitation of Facts Follow.) \* \* \* \*

[fol. 21] In summary, the employees of the Hamilton County Jail and the employees of the United States government in Atlanta testified positively and unequivocally that Hill was not denied the right to give notice of an appeal from the sentences pronounced in this court during the ten-day period that followed the date that his motion for new trial was overruled, namely, June 15, 1954. Many of these witnesses served meals to Hill while he was incarcerated in the institution here in Chattanooga and the institution in Atlanta. At least one of the witnesses who worked at the Hamilton County jail while Hill was incarcerated there talked with him on an average of three times per day, and at least one of the witnesses who worked in the Atlanta prison while Hill was there likewise was talking with him on an average of three times each day.

It is the opinion of the court and the court finds as a fact that the employees of the Hamilton County jail and the agents, representatives and custodians of the Atlanta prison did not refuse the right to Hill to give notice of his appeal from the judgment overruling the motion for a new trial, during the ten-day period that followed the action of the trial court in overruling the motion for a [fol. 22] new trial or at any other time.

Hill stated that in addition to his denial of the rights of appeal, he was deprived of his constitutional rights because (1) the trial court did not properly instruct the jury on his defense of insanity; (2) that the trial court did not ask him if he had anything to say in his behalf immediately before sentence was pronounced on June 4, 1954, and that this was a violation of Rule 32(a) of the Federal Rules of Criminal Procedure; (3) that the trial court erred in permitting statements of Doctor Graff and Doctor Miles relating to Hill's mental examination, under title 18 U. S. C. section 4244, to be brought before the jury; and (4) that the sentences were illegal because they were imposed in violation of the constitution of the United States in that a confession was used before the jury

which was illegally obtained from Hill by the officers, and he, Hill, was not taken before the nearest available magistrate or United States commissioner for arraignment within a reasonable time after he was arrested.

It is this court's interpretation of the Court of Appeals' opinion that the case was remanded to this court for the sole purpose of hearing evidence on the question of whether or not Hill was denied his right to give notice [fol. 23] of an appeal and, after hearing evidence on this subject, to determine from such evidence as to whether Hill was denied his constitutional right to give notice of appeal. If the court is not correct in its interpretation of this order, then the court would be required to pass on the other grounds contained in the petition which have just been mentioned.

As a matter of precaution, and in order that the other court may have the views of this court, in the event of an appeal, it is the opinion of this court that all of the grounds in the petition, other than ground No. 5, complain of errors of law allegedly committed by the trial court, and that such alleged errors cannot be corrected in a proceeding under title 28 U. S. C. 2255. In other words, this section cannot be used as a substitute for an appeal. See United States v. Haywood, 7th circuit, 207 Fed 2nd 156; United States v. Rosenberg, 2nd Circuit, 200 Fed 2nd 666; United States v. Walker, 2nd Circuit, 197 Fed 2nd 287.

The court concludes that there is no basis in fact or law for vacating the sentences imposed by this court in cases Nos. 10113 and 10114.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the motion to vacate be, and the same is hereby, denied.

IT IS FURTHER ORDERED by the court that petitioner [fol. 24] be returned to the custodial agent of the government who had charge of him at the time he was brought to Chattanooga, or to the custody of the Attorney General of the United States.

DONE AND ORDERED in open court, at Chattanooga, Tennessee, this September 11, 1958.

/s/ Robert Taylor  
United States District Judge

[fol. 25] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

Criminal Cases No. 10113 and No. 10114

JAMES FRANCIS HILL, PETITIONER PRO SE

v.

UNITED STATES OF AMERICA, RESPONDENT

PETITIONER'S DULY VERIFIED AFFIDAVIT OF POVERTY Is  
HEREON ATTACHED AS PROVIDED BY LAW—

Filed Oct. 21, 1959

\* \* \* \*

[fol. 26] Comes now James Francis Hill the petitioner after first being duly sworn, states that he is a citizen of the United States; that, because of his poverty, he is unable to pay the costs of this petition or Motion to Vacate Sentences under Section 2255 of Title 28 U.S.C., or to give security for the same; that he believes he is entitled to the redress he seeks and that said Motion to Vacate Sentences is sought in good faith.

Wherefore, petitioner respectfully prays that he be allowed to docket this proceeding and to proceed in this court without being required to prepay fees or costs or to give security therefor; and for other such pertinent rights and privileges as he may be entitled to receive.

That in forma pauperis under Section 1915 of Title 28 U.S.C. and Section 753 of Title 28 U.S.C. the petitioner be furnished one (1) Certified Copy of Transcript of the Evidence in Cases No. 10113 and 10114 so as to allow the petitioner as an indigent prisoner the right to prove the verity of his allegations that are afforded others able to pay for justice.

Respectfully Submitted

name: James Francis Hill

Petitioner Pro Se

address: P.M.B. 9944-II Springfield, Mo.

STATE OF MISSOURI )      SS:  
COUNTY OF GREENE )

Sworn to before me and subscribed in my presence this  
19th day of October, 1959

Acting Record Clerk

Record Clerk Authorized by the Act of July 7, 1955 to  
Administer Oaths (18 U.S.C. 4004)

[fol. 27]

IN UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

Criminal Cases No. 10113 and No. 10114

JAMES FRANCIS HILL, PETITIONER PRO SE

v.

UNITED STATES OF AMERICA, RESPONDENT

MOTION TO VACATE SENTENCES UNDER SECTION 2255, TITLE  
28 U.S.C. IN FORMA PAUPERIS UNDER SECTION 1915,  
TITLE 28 U.S.C.—Filed October 21, 1959

STATEMENT OF FACTS  
WHY SENTENCES SHOULD BE VACATED

A. Petitioner was deprived of his right to appeal his conviction by the failure of the Clerk of the U.S. District Court for the Eastern District of Tennessee, Southern Division at Chattanooga, Tennessee to properly file and or bring to the attention of the court a notice of appeal in the form of a brief letter which clearly stated the petitioner desired to appeal his conviction in forma pauperis. This said letter was written on or about June 23d, 1954 in Cell No. 13 at the Associate Warden Building in the Atlanta Federal Prison at Atlanta, Georgia and handed to custodial officer on duty at the 4 to 12 P.M. shift for mailing. The petitioner did not receive any answer to this letter which was in effect a notice of appeal under Rule 37 (a)(2) of F.R.Cr.P., Title 18 U.S.C. as it was written within the 10 day period as set forth by Rule 37(a)(2).

[fol. 28] This denial of his appeal right especially when he was an indigent prisoner who had to rely on mail to safeguard this constitutional right was a denial of due process of law under the 5th Amendment. See Boykin v. Huff, 121 F.2d 865 and authorities cited in Brown v. Looney, 249 F.2d 61. The mail records in Atlanta Fed-

eral prison show that petitioner had written a letter to the Clerk of Court during that 10 day period and the letter must be accepted-as in effect as of filing a notice of appeal under Rule 37(a)(2) of F.R.Cr.P. 18 U.S.C., See U.S. v. Isabella, 251 F.2d 223 and Jacobanis v. U.S., 256 F.2d 485.

The petitioner would like to point out that due to the extreme mental anguish and disturbances that he had in June, 1954, that the fact he had wrote such a letter completely escaped his memory until he ran across a notation in his legal file recently that Mr. Joseph B. Roberts Court appointed attorney had written that I could raise the question that Judge Robert L. Taylor had referred to a considered letter that Judge Taylor had said was written by the petitioner to the Clerk of the District Court within the 10 days period set for appeal time and that there was no testimony that such letter was written or received.

In going over his movements between June 21 to June 26 of 1954 the petitioner did remember writing a short letter to the Clerk of Court stating his desire to appeal in forma pauperis and that said letter was mailed on or about the 23d of June, 1954, to the Clerk of Court from Atlanta Federal prison and that letter should be [fol. 29] in the records or Court files somewhere now.

B. And in support of the petitioner's allegation of appeal denial, he also alleges that he was denied the right under Rule 32(a) of Federal Rules of Criminal Procedure, Title 18 U.S.C. to have the opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. This provision of Rule 32(a) is jurisdictional and mandatory, and the noncompliance with that mandatory provision by the trial court deprived the petitioner of due process of law under the 5th Amendment to the United States Constitution and constituted discrimination and a denial of equal justice under law. The Transcript page 8 shows that Judge Darr did not comply with the mandatory provision of Rule 32(a) on June 4, 1954 and that further Judge Darr in prejudicial misconduct signed the Judgment and Commitment papers as complying with Rule 32(a) when in fact he did not do so.

C. Petitioner further alleges he was denied a fair and impartial trial as guaranteed by the 6th Amendment and that he was denied due process of law and forced to be a witness against himself in violation of the 5th Amendment by Judge Darr allowing incriminating statements that petitioner had made to Dr. Norman Graff and other psychiatrists under the provisions of Section 4244 of Title 18 U.S.C. to be brought to the notice of the jury and which prejudiced the petitioner. In fact Section 4244 prohibits any such privileged statements being brought to the notice of the jury or used as evidence against him, [fol. 30] and in connection with allegation C, Judge Darr prejudicially and in direct violation of petitioner's right to be free from compulsory self-incrimination under the 5th Amendment and in direct violation of the mandatory clause of Section 4244 and in violation of petitioner's right to a fair and impartial trial and to due process of law, instructed the jury in such a way as to bring to the jury's notice that the Court had found the petitioner competent to stand trial.

"Plain errors or defects affecting substantial rights may be noticed although they were not brought to attention of the Court." Rule 52(b) Fed. Rules Crim. Proc. 18 U.S.C. and rights as set forth in allegation C cannot be waived. It is clear that under Section 2255 of Title 28 U.S.C. the judgment is open to collateral attack and that there was such a denial and infringement of petitioner's constitutional rights as to render the judgment vulnerable to collateral attack. Although *Taylor v. U.S.*, 222 F.2d 398 is not a case under Section 2255 proceeding it does cover pretty well the Court's duty under Section 4244 of Title 18 U.S.C. and backs up petitioner's contentions on this issue.

D. Petitioner further alleges that he was deprived of a fair and impartial trial under the 6th Amendment and denied due process of law under the 5th Amendment by Judge Darr's improper and prejudicial instructions to the jury of petitioner's defense of insanity as Judge Darr instructed the jury, in face of unalterably opposed of the preponderance of the evidence, that the petitioner had the burden of proof on his shoulders when in fact the

burden had shifted to the government when the petitioner [fol. 31] had shown conclusive proof of prior insanity to the offense. The instruction was a defect affecting substantial rights under Rule 52(b) Fed. Rules Crim. Pro. 18 U.S.C. See Tatum v. U.S., 222 F.2d 398; and cases discussed in Durham v. U.S., 214 F.2d 862 and Stewart v. U.S., 214 F.2d 879.

E. Petitioner further alleges he was denied a fair and impartial trial as guaranteed by the 6th Amendment and denied due process of law under the 5th Amendment as well as forced to be a witness against himself which the 5th Amendment prohibits by the use of the prosecution and under the Court's direction a confession which was extracted from the petitioner by two F.B.I. agents during a period of 72 hours unlawful detention, the confession was unconstitutionally coerced by use of threats, denial of food, water, and psychological brainwashing without a letup until they extracted what they wanted. At no time was petitioner told of his rights to counsel, to keep silent nor was he told he was entitled to a prompt arraignment. All of this took place at the Nassau County Jail in Florida and at the Polk County Jail at Bartow, Florida from 8 A.M. of October 31, 1952 through to November 3, 1952. Petitioner was alone he had no friend or counsel to advise him in such an alien and hostile atmosphere.

The use of that confession was strictly prohibited by [fol. 32] law and the Constitution from being used as evidence to convict the petitioner and the Court was prejudicial in allowing the use of it before the jury. This was clearly a defect affecting petitioner's substantial rights under Rule 52(b) Fed. Rules Crim. Proc. 18 U.S.C.

Under Section 2255 is the only remedy available open to the petitioner to correct the manifest injustice in petitioner's case.

There can be no doubt that such a confession was inadmissible. See McNabb v. U.S., 318 U.S. 332; Brown v. Mississippi, 297 U.S. 278; Symons v. U.S., 178 F.2d 615; and Akowskey v. U.S., 158 F.2d 649.

F. Petitioner further alleges he was denied due process of law under the 5th Amendment and denied a fair and impartial trial, denied witnesses on his own behalf and

denied effective assistance of counsel under the 6th Amendment by: 1, unfavorable publicity, 2 denied witnesses under Section 3005 of Title 18 U.S.C., 3 jury improperly read newspaper and detective magazine stories about the petitioner during the trial, 4 the U.S. Attorney James M. Meek and Judge Darr in front of the jury admitted they read detective stories about the petitioner, 5 The U.S. Attorney prejudicially brought to the notice of the jury previous convictions and crimes of the petitioner, 6 the Court refused to accept as factual evidence that the petitioner was a legally insane person at the time of the offense by virtue of the fact petitioner was an escaped mental patient from January, 1941, to October 31, 1952 and had not been restored legally to sanity at time of [fol. 33] of alleged federal offenses on October 23, 1952 and this fact was prima facie evidence of insanity at time of offenses, 7 petitioner was insane at time of trial and his two Court appointed counsels so testified on September 10, 1958 through Mr. Jack Byron that they felt petitioner was insane and these same two court-appointed counsels in drawing up the motion for a new trial alleged petitioner was insane at time of offense and at time of trial. In connection with this allegation the trial court at the sanity hearing on June 2, 1954 prejudicially denied admittance of the fact that petitioner had been ruled insane by the 6th Circuit Court of Appeals in Case No. 11,818 July 7, 1953 Titled Hill v. U.S.

It is inescapable that such a succession of procedural shortcomings and restrictions of petitioner's rights along with the departures from accepted standards of justice was a miscarriage of justice in petitioner's case and he is entitled to redress by remedy of Section 2255, 28 U.S.C.

#### LAW OF CASES UNDER SECTION 2255 OF TITLE 28 U.S.C.

A sentence may be collaterally attacked when a prisoner convicted under federal law is denied his constitutional right to appeal his conviction.

A sentence can be attacked under Section 2255, Title 28 U.S.C. which provides and the United States Constitution 5th Amendment requires that a District Judge must grant

a hearing, determine the issues and make findings of fact [fol. 34] and conclusions of law.

Both the United States Constitution and 28 U.S.C., Sec. 2255, require that a hearing be granted, to determine whether petitioners right to appeal was abrogated by the negligence of Government employees in failure to treat the letter desiring to appeal in forma pauperis as a notice of appeal of conviction under Rule 37(a)(2) of Title 18 U.S.C. and to notify the petitioner of receipt of the letter.

Petitioner has a constitutional right to a hearing. See *Cochran v. Kansas*, 316 U.S. 255; *Miller v. Sanford*; *Hill v. U.S.*, Case No. 13,520 June 26, 1958.

Petitioner has a statutory right to a hearing and the hearing requisite of this portion of Sec. 2255 must be met, unless records *conclusively* show the falsity of petitioner's allegations. That proviso does not apply here. Interference and denial with a right to appeal a criminal conviction involves facts which are *dehors* the files and records of a case. The difficulty is compounded by the incompleteness of "records" in this case, *i.e.*, there is no transcript, only a hearing, involving interrogations of the parties along with the prisoner, could determine the pertinent facts.

But it is beyond argument that records alone cannot *conclusively* establish that petitioner's right to appeal was not obstructed. The Court of Appeals for the 6th Circuit has emphatically required an adherence to this test of conclusiveness. See *Howard v. U.S.*, 186 F.2d 778, 780. [fol. 35] Therefore, the Constitution and Section 2255 require that the petitioner be given a hearing with a determination of the issues, facts and laws and that such a hearing in this case is an adversary inquiry, not ex parte, with petitioner present. See *Hayman case (U.S. v. Hayman*, 342 U.S. 205), where, as here, there were substantial issues of fact as to events in which the prisoner participated, the Court should require his production for a hearing." (342 U.S. at 223.)

Section 2255 requires it in this case and must be adhered to.

The concept of *res judicata* does not apply to habeas corpus proceedings. *Waley v. Johnson*, 316 U.S. 101, 105. The same therefore, is true of Section 2255. Until there is a judicial finding on this denial of petitioner's right to appeal on the acceptance of that letter as a notice of appeal, *res judicata* may not be invoked by the Government. See *Doud v. U.S. ex rel Cook*, 340 U.S. 206 at page 208.

The absence of a *finding* by the State Court precluded a *res judicata* defense by the State.

Nor does it make any difference that Sec. 2255 provides that a sentencing Court shall not be required to "entertain a second or successive motion for similar relief."

Petitioner has alleged grounds that entitle him to a [fol. 36] hearing. Until there is a hearing, the "successive motion" proviso is no excuse. (See *Hallowell v. U.S.*, 197 Fed. 2d, 926, 928.)

Petitioner must, therefore, be given his hearing under the U.S. Constitution and Section 2255.

#### CONCLUSION

This Court must issue a writ of habeas corpus ad testicandum and order the U.S. Marshal to serve it upon the Warden of the U.S. Medical Center for custody of the petitioner so that petitioner can have the opportunity to prove the verity of his allegations by an adversary proceeding and not ex parte proceeding. The District Judge must determine the issues, and make findings of fact and law.

Respectfully Submitted

signed, James Francis Hill  
Petitioner Pro Se

STATE OF MISSOURI )      SS:  
COUNTY OF GREENE )

**AFFIDAVIT OF VERIFICATION**

I, James Francis Hill being first duly sworn, do state that the matters stated in the foregoing petition by me subscribed are true as I verily believe.

Respectfully Submitted

signed, James Francis Hill  
Petitioner Pro Se  
address: P.M.B. 9944-H Springfield, Missouri

Sworn to before me and subscribed in my presence this  
19th day of October, 1959

/s/ W. L. Tappana  
Acting Record Clerk

Record Clerk Authorized by the Act of July 7, 1955 to  
Administer Oaths (18 U.S.C. 4004)

[fol. 37]

**AFFIDAVIT OF SERVICE**  
(Omitted in Printing)

[fol. 38-40] • • • •

[fol. 41] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

[Title omitted]

RESPONSE OF UNITED STATES OF AMERICA TO PETITIONER'S  
MOTION TO VACATE SENTENCES—Filed Jan. 7, 1960

Now comes the United States of America by John C. Crawford, Jr., United States Attorney for the Eastern District of Tennessee, and for response to petitioner's motion to vacate sentences says:

On June 4, 1954, petitioner was convicted by a jury under separate indictments for transporting in interstate commerce a stolen motor vehicle and also a person who had theretofore been kidnapped and held for ransom, and on the same date a sentence of 20 years for the kidnapping offense and a sentence of 3 years for the motor vehicle offense, to run consecutively, were imposed. On June 9, 1954, a motion for a new trial was filed. On June 15, 1954, with the petitioner present, the motion was heard and denied by the Court. No appeal was taken.

On October 18, 1954, petitioner filed proceedings in the district court to vacate the judgment under Section 2255, Title 28, U. S. C., which the District Judge dismissed. The Court of Appeals affirmed. *Hill v. United States*, 223 F2 699, cert. den. 350 U. S. 867.

On March 15, 1956, petitioner again filed a motion to vacate sentence which was denied by the District Judge and judgment affirmed by the Court of Appeals. *Hill v. U. S.*, 238 F2 84, cert. den. 352 U. S. 1007.

On December 19, 1957, petitioner again filed a motion to vacate his said sentences, which motion was denied by the District Judge, and on appeal was remanded by the Court of Appeals for a hearing on certain factual [fol. 42] issues. *Hill v. U. S.*, 256 F2 957. A hearing was held in September, 1958, requiring two days and consisting of testimony contained in 264 pages of the tran-

script, during which petitioner was given a full opportunity to raise not only the issues involved in that particular motion but also those raised in previous motions. On September 11, 1958, the trial court denied petitioner's motion. On appeal, the judgment was affirmed. *Hill v. U. S.*, 268 F2 203, cert. den. 361 U. S. 854. The mandate in this action was received and filed by the Clerk October 28, 1959.

Previous to the receipt by the Clerk of said mandate, petitioner on October 21, 1959, filed his fourth motion to vacate sentence; on November 16, 1959, filed an amendment to said motion; and has transmitted letters to the Court, one dated November 20, 1959, and the other dated December 4, 1959, pertaining to his said motion.

It would appear that all of the questions which petitioner could raise in a proceeding under Section 2255, Title 28, U.S.C., have been previously determined, and it being well settled that such a proceeding cannot be used as a substitute for an appeal. The matter of petitioner's deprivation of the right of appeal was thoroughly gone into at the hearing held September 10-11, 1958. At that hearing petitioner testified that he was present on June 15, 1954, at the time his motion for a new trial was heard and overruled and that he knew at that time that he had 10 days under Rule 37, Federal Rules of Criminal Procedure, in which to appeal. His contention at said hearing, and he so testified, was to the effect that during the 10-day period following the denial of his motion for a new trial on June 15, he was deprived of an opportunity to prepare and file a notice of appeal, which notice he knew had to be filed during that period.

Petitioner in his instant motion alleges that he was deprived of his right to appeal his convictions by the failure of the Clerk of this Court to file and/or bring to the attention of the Court a notice of appeal which was in the form of a letter written by petitioner on or about June 23, 1954, at the United States Penitentiary, Atlanta, [fol. 43] Georgia, and addressed to the Clerk of the United States District Court for the Eastern District of Tennessee, Southern Division, at Chattanooga, Tennessee, which letter he alleges was in effect a notice of appeal.

under Rule 37(a)(2) of Federal Rules of Criminal Procedure.

Respondent denies the truth of this allegation. A meticulous examination of the files and records in the office of the Clerk, including those recently returned by the Clerk of the United States Court of Appeals at Cincinnati, fails to disclose the receipt of any such letter by the Clerk. A sworn statement dated December 30, 1959, by W. H. York, Acting Warden of the United States Penitentiary, Atlanta, Georgia, attached hereto and designated Exhibit 1, states that a review of the petitioner's file at that institution does not reveal that such letter was written or handed to a custodial officer, or that petitioner wrote any letter addressed to the District Court during the period June 15 to June 30, 1954. The sworn statement of W. L. Tappana, Records Control Supervisor of the Medical Center for Federal Prisoners, Springfield, Missouri, where petitioner is now incarcerated, dated December 31, 1959, attached hereto and designated Exhibit 2, states that he reviewed the institution files covering petitioner and found no record of any communication addressed to the Clerk of the United States District Court at Chattanooga, Tennessee, during the period June 15 to June 30, 1954.

The said motion to vacate sentences, that is the motion filed October 21, 1959, recites:

"The petitioner would like to point out that due to the extreme mental anguish and disturbances that he had in June, 1954, that the fact he had wrote such a letter completely escaped his memory until he ran across a notation in his legal file recently that Mr. Joseph B. Roberts Court appointed attorney had written that I could raise the question that Judge Robert L. Taylor had referred to a considered letter that Judge Taylor had said was written by the petitioner to the Clerk of the District Court within the 10 days period set for appeal time and that there was no testimony that such letter was written or received.

[fol. 44] "In going over his movements between June 21 to June 26 of 1954 the petitioner did remember writing a short letter to the Clerk of Court stating his desire to

appeal in forma pauperis and that said letter was mailed on or about the 23d of June, 1954, to the Clerk of Court from Atlanta Federal prison and that letter should be in the records, or Court files somewhere now."

The attention of this Court, however, is directed to a letter dated October 15, 1958, from the petitioner to Mr. Byron Pope, Clerk, United States District Court, P. O. Box 591, Chattanooga 1, Tennessee, which is contained in the Clerk's file and which among other things recites as follows:

"Mr. Robert wrote on a paper that I did not discover until the other day that Judge Taylor referred to a letter I had written to you within the ten day period and that there was no testimony offered on that. It could be possible I did write such a letter to you and referred to wanting to appeal. It is remote but still possible I did from Atlanta between June 4 to June 26, 1954, or from Hamilton County Jail between June 4 and June 7, 1954, before being sent to Atlanta as I had no pencil or pen or paper or envelopes and stamps from June 14 after arriving at Hamilton County Jail till June 18, 1954, when I went back to Atlanta Fed. Prison. If I did write such a letter I do not actually remember it but there is a remote possibility I could have and if so it is still in the Court records and would be *prima facie* evidence that I did not waive my right to appeal."

The petitioner stated in this letter that he had no recollection of having written such a letter to the Clerk, and his reference in the above dated letter "that Judge Taylor referred to a letter I had written to you within the ten day period" had reference to this Court's order filed September 11, 1958, which contained the following recital:

"He had access to pencils and paper to write and mail letters from the prison during this period, one of which was mailed to Judge Darr on June 14, 1954, and filed as Exhibit No. 1 in the record. Letters of this character could have been written by Hill to the Clerk during the 10-day period after the motion for a new trial was over- [fol. 45] ruled." (Transcript of September 1958 hearing,

page 269). The letter dated June 14, 1954, from petitioner to Judge Leslie R. Darr, which was filed by the government as Exhibit 1 at said hearing (see transcript pages 61 and 62) was the only letter mentioned by this Court at said hearing, although the Court pointed out that petitioner had an opportunity to write a letter to the Clerk during the 10-day period, had he chosen to do so.

Respondent further says that petitioner's motion, including amendments, is without merit, that the presence of the petitioner for a hearing is unnecessary because he can produce no evidence that a letter in the nature of a notice of appeal was transmitted by him to the Clerk of this Court during the 10-day period except his own possible testimony to the effect that he did write such a letter but such testimony, if made, would be refuted by the statements made in the letter to the Clerk set out above, and said motion should be overruled.

/s/ John C. Crawford, Jr.  
United States Attorney

**CERTIFICATE OF SERVICE  
(Omitted in Printing)**

[fol. 46]

## EXHIBIT 1 TO RESPONSE

Received Dec. 3, 1959, U. S. Attorney's Office,  
Eastern District of Tenn. 12345

UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF PRISONS  
UNITED STATES PENITENTIARY  
Atlanta, Georgia

December 30, 1959

Mr. John C. Crawford, Jr.  
U. S. Attorney  
Knoxville, Tennessee

Dear Mr. Crawford:

In response to your telephone call, I have personally reviewed the file that we have at this institution on James Francis Hill, No. 74956-A.

Hill alledges that he wrote a letter addressed to the Clerk of the District Court, Chattanooga, Tennessee on or about January 23, 1954. He further alledges he handed the letter to a Custodial Officer who was on duty from 4:00 to 12:00 P. M. in the Associate Warden's Building where he was confined. I can find nothing in the file to show that Hill wrote such a letter and there is nothing in the file to indicate he handed such letter to the Custodial Officer.

Furthermore, nothing in our file indicates that he wrote a letter to the District Court at any time during the period June 15, to June 30, 1954.

Sincerely yours,

/s/ W. H. York  
W. H. YORK  
Acting Warden

WHY:lt

Sworn to and subscribed before me  
this 30th day of December, 1959

(SEAL) /s/ Louis J. Barta

Notary Public, Georgia State at Large  
My Commission Expires May 7, 1961

[fol. 47] EXHIBIT 2 TO RESPONSE

UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF PRISONSMEDICAL CENTER FOR FEDERAL PRISONERS  
Springfield, Missouri

December 31, 1959

I certify that as Records Control Supervisor, Medical Center for Federal Prisoners, Springfield, Missouri, I am the custodian of official institution records covering James Francis Hill, Register number 9944-H.

I further certify that I have reviewed the institution files covering James Francis Hill and have found no record of any communication addressed to the Clerk, U.S. District Court, Chattanooga, Tennessee during the period June 15, 1954 to June 30, 1954.

/s/ W. L. Tappana  
W. L. TAPPANA  
Records Control Supervisor

Subscribed and sworn to before me, a Notary Public, this 31st day of December, 1959.

(SEAL) /s/ Robert R. Crockett  
Notary Public,  
Greene County, Missouri

My commission expires April 22, 1960.

[fol. 48] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

Criminal Nos. 10,113, 10,114

JAMES FRANCIS HILL, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

MEMORANDUM AND ORDER—Filed Jan. 14, 1960

Petitioner, James Francis Hill, has filed another motion, supported by brief, to vacate the sentences in these cases. The motion was filed on October 21, 1959 and amended November 16, 1959. The motion, as amended, was filed pursuant to Section 2255 of Title 28, U.S.C. Upon receipt of the motion, the Clerk was directed to turn over the files to the United States District Attorney for the Eastern District of Tennessee for response. The response was filed on January 7, 1960 and the matter is now before the Court for determination.

The sentences were pronounced by Judge Leslie R. Darr on June 4, 1954. Petitioner first filed a motion to vacate, based on Section 2255 of Title 28, U.S.C., on October 18, 1954, which was dismissed by the District Judge and affirmed by the Court of Appeals. 223 Fed. 2d, 699, cert. denied 350 U. S. 867.

Another motion was filed on March 15, 1956 and again denied by the District Court and the judgment affirmed. 238 Fed. 2d, 84, cert. denied 352 U. S. 1007.

On December 19, 1957 still another motion to vacate was denied by the District Court, but on appeal was remanded for a hearing on factual issues. 256 Fed. 2d, 957.

The hearing was held pursuant to the mandate of the Court of Appeals in Chattanooga beginning September [fol. 49] 10, 1958 and ending the following day. At the conclusion of this hearing, at which the Judge who has

prepared this Memorandum and Order presided, detailed findings of fact and conclusions of law were made and the motion dismissed. (Tr. 265 et seq.) The action of the District Court was affirmed by the Appellate Court. 268 Fed. 2d, 203, cert. denied 361 U. S. 854.

Petitioner's principal claim in the September 1958 hearing was that the employees of the Hamilton County Jail, in which he was incarcerated for a short time following the rendition of the sentences, and the agents, representatives and custodians of the Atlanta Prison, that being the institution to which he was taken from the Hamilton County Jail, refused him the right to give notice of his appeal during the ten-day period that followed the action of the District Court in overruling his motion for a new trial.

In the present motion, petitioner claims that he gave notice of his appeal within the ten-day period to the Clerk of the United States District Court for the Eastern District of Tennessee and the Clerk failed to file it or bring it to the attention of the Court.

Petitioner's brief in support of the motion indicated that petitioner got the idea that the District Court felt that he wrote or may have written a letter to the Clerk, within the ten-day period as provided by the applicable rule, giving notice of his appeal from the sentences. The pertinent language used by the Court is:

"He (petitioner) had access to pencils and paper to write and mail letters from the prison during this period, one of which was mailed to Judge Darr on June 14, 1954, and filed as Exhibit No. 1 in the record. Letters of this character could have been written by Hill to the clerk during the ten-day period after the motion for new trial was overruled." (Tr. 269.)

The Court used this language to support its conclusion that the petitioner did not give and was not deprived of giving a notice of appeal within the ten-day period following the rendition of the sentences and that he was not deprived of any constitutional rights.

[fol. 50] The other questions made by petitioner in the present petition were made in the petition upon which the

Court passed in the September 1958 hearing and found to be lacking in merit. In that connection, the Court said:

"It is this court's interpretation of the Court of Appeals' opinion that the case was remanded to this court for the sole purpose of hearing evidence on the question of whether or not Hill was denied his right to give notice of an appeal and, after hearing evidence on this subject, to determine from such evidence as to whether Hill was denied his constitutional right to give notice of appeal. If the court is not correct in its interpretation of this order, then the court would be required to pass on the other grounds contained in the petition which have just been mentioned.

As a matter of precaution, and in order that the other court may have the views of this court, in the event of an appeal, it is the opinion of this court that all of the grounds in the petition, other than ground No. 5, complain of errors of law allegedly committed by the trial court, and that such alleged errors cannot be corrected in a proceeding under title 28, U. S. C. 2255 . . ." (Tr. 271, 272)

The petitioner was given full opportunity in the September 1958 hearing to raise the question that he raises in his present motion. The present motion asks similar relief to that asked in the motion which was heard in the September 1958 hearing as well as in previous motions.

The Court has re-examined the motion and is of the opinion and finds that the files and records in the case conclusively show that petitioner is not entitled to relief; that he has not been deprived of any constitutional right; and, that his presence is not necessary for a hearing on the motion filed October 21, 1959 and amended November 16, 1959.

A separate order has this day been passed to the Clerk denying petitioner's motion, as amended.

/s/ Robert Taylor  
United States District Judge

[fol. 51] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

Criminal Nos. 10,113, 10,114

JAMES FRANCIS HILL, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ORDER DENYING MOTION—January 14, 1960

For the reasons indicated in Memorandum this day passed to the Clerk, it is ORDERED that petitioner's motion, filed on October 21, 1959 and amended November 16, 1959, be, and same hereby is, denied.

Enter:

/s/ Robert Taylor  
United States District Judge

[fol. 52]

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

JUDGMENT—June 14, 1960

The above cause coming on to be heard on the record, the briefs of the parties and the argument of counsel in open court, and the court being duly advised:

Now, therefore, it is ordered, adjudged and decreed that the order of the District Court denying petitioner's motion to vacate sentences be and is hereby affirmed on the opinion of Judge Robert L. Taylor.

Approved for entry:

/s/ Thomas F. McAllister  
United States Circuit Judge

[fol. 53] Clerk's Certificate to foregoing  
transcript omitted in printing